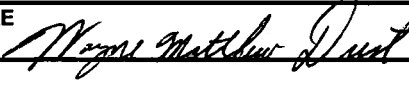
	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>ASSISTANCE ID NO.</b>			<b>DATE OF AWARD</b> 12/19/2007
		<b>PRG</b>	<b>DOC ID</b>	<b>AMEND#</b>	
		<b>BF - 00E38501 - 0</b>			<b>MAILING DATE</b> 12/26/2007
		<b>TYPE OF ACTION</b> New			
<b>PAYMENT METHOD:</b> ASAP			<b>ACH#</b> 1726250		
<b>RECIPIENT TYPE:</b> Municipal			<b>Send Payment Request to:</b> Las Vegas Finance Center		
<b>RECIPIENT:</b>			<b>PAYEE:</b>		
City of Rockford 425 East State Rockford, IL 61104 EIN: 36-6006082			City of Rockford 425 East State Street Rockford, IL 61104		
<b>PROJECT MANAGER</b>		<b>EPA PROJECT OFFICER</b>		<b>EPA GRANT SPECIALIST</b>	
Wayne Matthew Dust 425 East State Rockford, IL 61104 E-Mail: wayne.dust@rockfordil.gov Phone: (815) 987-5636		Romona Smith 77 West Jackson Blvd., SM-5J Chicago, IL 60604-3507 E-Mail: Smith.Romona@epamail.epa.gov Phone: 312-886-6139		Frances Shields Assistance Section, MC-10J E-Mail: Shields.Frances@epamail.epa.gov Phone: 312-353-4151	
<b>PROJECT TITLE AND DESCRIPTION</b> City of Rockford-Illinois The United States Environmental Protection Agency is providing funds to the City of Rockford to conduct brownfield cleanup activities at the following three sites: Rock Street Frontage Property [\$200,000]; Former Machine Shop Property [\$200,000]; and River Street Frontage Property [\$200,000]. The cleanup funding provided for these sites will provide the City with the catalyst for these sites redevelopment. The City's goal is to redevelop the sites and create a livable, walkable community that thrives. The City has completed the investigation on these sites and has prepared and submitted a Remedial Action Plan for the identified contamination at the respective properties.					
<b>BUDGET PERIOD</b> 10/01/2007 - 09/30/2010		<b>PROJECT PERIOD</b> 10/01/2007 - 09/30/2010		<b>TOTAL BUDGET PERIOD COST</b> \$600,000.00	
				<b>TOTAL PROJECT PERIOD COST</b> \$600,000.00	
<b>NOTICE OF AWARD</b>  Based on your application dated 08/15/2007, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$600,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$600,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.					
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b>			<b>ORGANIZATION / ADDRESS</b>		
U.S. EPA Region 5 Mail Code MCG10J 77 West Jackson Blvd. Chicago, IL 60604-3507			U.S. EPA, Region 5 Superfund Division, S-6J 77 West Jackson Blvd. Chicago, IL 60604-3507		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
<b>SIGNATURE OF AWARD OFFICIAL</b> Digital signature applied by EPA Award Official		<b>TYPED NAME AND TITLE</b> Walter W. Kovalick, Jr., Ph.D., Assistant Regional Administrator for Resources Management		<b>DATE</b> 12/19/2007	
<b>AFFIRMATION OF AWARD</b>					
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>					
<b>SIGNATURE</b> 		<b>TYPED NAME AND TITLE</b> Wayne Matthew Dust, Planning Administrator		<b>DATE</b> 1-11-2008	

## EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 600,000	\$ 600,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 600,000	\$ 600,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
ROCK ST	0805STX015	08	E4C	05F1AG7	402D79E	4114	G5BHOQ00		200,000
MACH SHOP	0805STX015	08	E4C	05F1AG7	402D79E	4114	G5BKOQ00		200,000
RIVER ST	0805STX015	08	E4C	05F1AG7	402D79E	4114	G5BJOQ00		200,000
									600,000

## **Administrative Conditions**

### **1. CONSULTANT CAP**

Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2007, the limit is \$557.28 per day and \$69.66 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provided the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

### **2. COPYRIGHTED MATERIAL**

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- a. the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- b. termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

### **3. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

#### **4. HOTEL-MOTEL FIRE SAFETY**

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

#### **5. LOBBYING AND LITIGATION - ALL RECIPIENTS**

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

#### **6. MANAGEMENT FEES**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

#### **7 MBE/WBE REQUIREMENTS**

In accordance with EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance programs, the recipient agrees to:

- a) Accept the applicable FY 2007 "fair share" goals negotiated with EPA by the Illinois Environmental Protection Agency as follows:

**Combined Rate: MBE 5% WBE 12%**

If the recipient does not want to rely on applicable State's MBE/WBE goals, the recipient agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in relevant market for construction, services, supplies and equipment. "Fair share" objectives must be submitted the MBE Coordinator within 30 days of award and approved by EPA no later than 30 days thereafter.

- b) Ensure to the fullest extent possible that at least the FY 2007 "fair share" objective [see a) above] of Federal funds for prime contractors or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities.

- c) Include in bid documents "fair share" objectives of 2007 fair share percentage [see a) above] and require all of its contractors to include in their bid documents for subcontracts the negotiated fair share percentages.

- d) Follow the six affirmative steps stated in 40 CFR 30.44(b) 40 CFR 31.36(e), 35.3145(d), or 35.6580, as appropriate.

- e) The recipient agrees to submit an EPA form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to Adrienne M. Callahan, MBE Coordinator within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30). For assistance awards for continuing

environmental programs (40 CFR Part 35, Subpart B) and assistance awards with institutions of higher education, hospitals and other non-profit organizations, the recipient agrees to submit an EPA form 5700-52A to Adrienne M. Callahan, MBE Coordinator by October 30 of each year. (Reporting form available at [www.epa.gov/osdbu](http://www.epa.gov/osdbu).) Submit reports to:

**Adrienne M. Callahan, Region 5 MBE/WBE Coordinator**  
**USEPA, Acquisition and Assistance Branch**  
**77 West Jackson Boulevard (MC-10J)**  
**Chicago, IL 60604**

f) In the event race and/or gender neutral efforts prove to be inadequate to achieve a fair share objective for MBE/WBEs, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the fair share objective.

g) Until the recipient has completed its fair share negotiations with EPA, it agrees to maintain state Agency's fair share objectives. Once the recipient has completed its fair share negotiations with EPA, it will apply those objectives. The recipient also agrees to include in its bid documents the applicable FY 2007 "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the applicable FY 2007 "fair share" percentages and to comply with paragraphs (c) through (e) above.

EPA may take correction action under 40 CFR Parts 30, 31 and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

For further information, please contact Adrienne Callahan at 312-353-5556, email: [Callahan.adrienne@epa.gov](mailto:Callahan.adrienne@epa.gov)

#### **8. MULTI-YEAR GRANT - INTERIM FINANCIAL STATUS REPORTS**

An interim Financial Status Report – also called the SF269 - must be submitted annually within 90 days following the end of each 12-month period. All interim FSRs must be submitted to the EPA Grants Specialist as identified on page one of this Assistance Agreement.

#### **9. NATIONAL HISTORIC PRESERVATION ACT**

Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable shall assist EPA in complying with any requirements of the Act and implementing regulations.

#### **10. PROCUREMENT OF RECYCLED PRODUCTS**

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

#### **11. RECYCLED PAPER**

In accordance with EPA Order 1000.25 and Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, Federal Acquisition, Recycling, and Waste Prevention in its entirety.

## **12. REIMBURSEMENT LIMITATION**

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

## **13. SMALL BUSINESS IN RURAL AREAS**

By accepting this agreement, the recipient agrees to comply with Section 129 of Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988. Therefore, if the recipient awards a contract under this assistance agreement, it will utilize the following affirmative steps relative to Small Business in Rural Areas (SBRAs):

- a. Placing SBRAs on solicitation lists;
- b. Ensuring that SBRAs are solicited whenever they are potential sources;
- c. Dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
- d. Establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;
- e. Using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
- f. Requiring the contractor, if it awards subcontracts, to take the affirmative steps in subparagraphs a. through e. of this condition.

## **14. SUBAWARDS**

- a. The recipient agrees to:
  - (1) Establish all subaward agreements in writing;
  - (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
  - (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
  - (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
  - (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
  - (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
  - (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
  - (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

## **15. SUSPENSION & DEBARMENT: 2 CFR PART 1532**

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

#### **16. UNLIQUIDATED OBLIGATIONS - PART 31 RECIPIENTS**

##### **Submission of Financial Status Report**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Financial Status Report – also called the SF269 – to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Completed SF269s must be faxed to 702-798-2423 or mailed to the following address: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

#### **17. FEDERAL CASH TRANSACTION REPORT**

The SF272 report is due within 15 working days following December 31 of any given calendar year. This form must be submitted to: U.S. EPA, LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. For more information contact: Richard Sherburne, LVFC at 702-798-2494.

#### **18. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 - PART 31 RECIPIENTS**

We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either i. Associated with performance under this award; or ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at as implemented by our agency at 2 CFR part 1532.

You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph 2 of this section: i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

a1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award

### **Programmatic Conditions**

## **Cleanup Terms and Conditions**

**Please note that these Terms and Conditions (T&Cs) apply to brownfields cleanup grants awarded under CERCLA 104(k).**

## **I. GENERAL FEDERAL REQUIREMENTS**

**Note: These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental recipients.**

### **A. Federal Policy and Guidance**

1.
  - a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
  - b. The CAR must consider whether they are required to conduct cleanups under a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure the proposed cleanup is protective of human health and the environment.
  - c. **OPTIONAL - Optional T&C for CAR recipients that choose to participate in State or Tribal response programs that do not have a promulgated program.** If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure protectiveness of human health and the environment.
2. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include:
  - a. CERCLA 104(g) requires that grant recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts “funded in whole or in



part” with funds provided under this agreement. The CAR must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.

- b. The CAR agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled “Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects,” as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled “Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.”
- c. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

## **B. Changes to Sites and Cleanup Methods**

- 1.
  - a. The CAR must use funds provided by this agreement to clean up the brownfield site in the EPA approved work plan. Any changes to the boundaries of the site must be approved by EPA in a revised work plan.
  - b. The CAR may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.

## **II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

### **A. Term of the Agreement**

- 1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
- 2. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement.

## **B. Substantial Involvement**

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement may include reviewing financial and program performance reports; and monitoring all reporting, record-keeping, and other program requirements.
  - c. EPA may waive any of the provisions in term and condition II.B.1., at its own initiative or upon request by the CAR. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
  - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
  - c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

## **C. Cooperative Agreement Recipient Roles and Responsibilities**

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment and cleanup activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). The CAR may not subgrant to

for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

#### **D. Quarterly Progress Reports**

1. The CAR must submit progress reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:
  - a. Documentation of progress at meeting performance outcomes/outputs; project narrative; project time line; and an explanation for any slippage in meeting established outputs/outcomes.
  - b. An update on project milestones.
  - c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
  - d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.

CAN CHANGE - POs CAN BE FLEXIBLE IN WHAT THEY REQUEST IN QUARTERLY REPORTS (SPECIFICALLY SUB-ELEMENTS 1 - 9) AS ACRES ONLY DRAWS PROPERTY INFORMATION FROM PROPERTY PROFILE FORMS

- e. *Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the work plan. To the extent consistent with the work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance reporting include:*
  1. *Acres per property*
  2. *Cleanup started/completed*
  3. *Types of contaminants cleaned up*
  4. *Acres of greenspace created*
  5. *Engineering/institutional controls required, type, and whether they are in place*
  6. *Redevelopment underway*
  7. *Funds leveraged*
  8. *Jobs leveraged*

9. *Health monitoring studies, insurance, and/or institutional controls funded*

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA-approved work plan.
3. The CAR must complete and submit relevant portions of the Property Profile Form reporting the signing of a loan or subgrant, the initiation of cleanup activities, the completion of cleanup activities and other relevant project milestones, e.g., concerning institutional controls, contaminants, and reuse. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at: <http://www.epa.gov/brownfields/pubs/rptforms.htm>
4. In accordance with 40 CFR§31.40(d) or 40 CFR §30.51(f), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

*OPTIONAL/CAN CHANGE - Not applicable if cost-share waived by EPA*

**A. Cost Share Requirement - Do not use if waived by EPA**

1. CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

**B. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the EPA-approved work plan, cooperative agreement funds may be used for programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section IV of these terms and conditions. In addition, eligible programmatic expenses may include:
  - a. Ensuring cleanup activities at a particular site are authorized by CERCLA 104(k) and the EPA approved work plan;
  - b. Ensuring that a cleanup complies with applicable requirements under

Federal and State laws, as required by CERCLA 104(k);

- c. Using a portion of the grant to purchase environmental insurance for the remediation of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section C;
- d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable in III.C.2; and carrying out community involvement pertaining to the cleanup activities.

**CAN CHANGE -**

- 2. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfields program development and implementation (including monitoring of health and institutional controls) as described in Task \_\_\_\_ of the EPA-approved work plan. The CAR must maintain records on funds that will be used to carry out Task \_\_\_\_ of its EPA-approved work plan to ensure that no more than 10% of its funds are used for brownfields program development and implementation (including monitoring of health and institutional controls) .

**C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

- 1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - a. Pre-cleanup environmental assessment activities such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
  - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
  - c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new facility or addressing public or private drinking water supplies that have deteriorated through ordinary use);
  - d. Job training unrelated to performing a specific cleanup at a site covered by the grant;
  - e. To pay for a penalty or fine;
  - f. To pay a federal cost share requirement (for example, a cost-share required by

another Federal grant) unless there is specific statutory authority;

- g. To pay for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107;
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
  - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
- 2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR.
  - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
  - b. Ineligible grant administration costs include direct costs for:
    - (1) Preparation of applications for Brownfields grants;
    - (2) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
    - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
    - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
    - (5) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
    - (6) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
    - (7) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and

(8) Close out under 40 CFR 30.71 and 40 CFR 31.50.

**D. Grant Recipient Eligibility**

1. The CAR may only clean up sites *it solely owns*. The CAR must retain ownership of the site throughout the period of performance of the grant. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approves a different arrangement.

**E. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA §107**

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA 107. If the CAR is not potentially liable based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), the CAR must meet certain continuing obligations in order to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA 104(k)(7)(C). These continuing obligations include:

(1) complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

(2) taking reasonable steps with respect to hazardous substance releases;

(3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and

(4) complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR’s continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§101(35), 101(40), 107(b), 107(q) and 107(r).

**F. Interest-Bearing Accounts and Program Income**

1. Interest earned on advances are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.

2. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 40 CFR 30.24(b)(1) or 40 CFR 31.25(g)(2), as applicable.

## **IV. CLEANUP ENVIRONMENTAL REQUIREMENTS**

### **A. Authorized Cleanup Activities**

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
2. For cleanup of petroleum sites identified in the EPA-approved work plan, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The cleanup method chosen must be based on this analysis.
3. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

### **B. Quality Assurance (QA) Requirements**

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

### **C. Community Relations and Public Involvement in Cleanup Activities**

1. All cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

### **D. Administrative Record**



1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanup is complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

#### **E. Implementation of Cleanup Activities**

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. Subject to the EPA notification and approval provision of Section I.B.1.b., the CAR is allowed to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the CAR is unable or unwilling to complete the cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

#### **F. Completion of Cleanup Activities**

1. The CAR shall ensure that the successful completion of a cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanup is complete. This documentation needs to be included as part of the administrative record.

### **V. OTHER CLEANUP GRANT REQUIREMENTS**

#### **A. Inclusion of Special Terms and Conditions in Cleanup Documents**

1. The CAR shall meet the cleanup and other program requirements of the cleanup including:
  - a. In accordance with 40 CFR 31.42 or 40 CFR 30.53, the CAR shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with cleanup grant funds. Cooperative agreement recipients shall provide access to records relating to cleanups supported with cleanup grant funds to authorized representatives of the Federal government.
  - b. The CAR has an ongoing obligation to advise EPA if assessed any penalties resulting from environmental non-compliance at the site subject to this agreement.

#### **B. Conflict of Interest**

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of

subgrants that create real or apparent personal conflicts of interest or the appearance of the CAR's lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- (i) The affected party,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

## **VI. PAYMENT AND CLOSEOUT**

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; "close out" refers to the process that the U.S. EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

### **A. Payment Schedule**

1. **Alternate 1.** If the approved budget for the project includes a substantial amount of construction costs, EPA will pay the CAR on a reimbursement basis. The CAR must submit documentation of obligations and expenses incurred under the agreement to EPA's project officer for approval prior to obtaining payment from EPA under the following procedures\_\_\_\_\_.
2. **Alternate 2.** If the approved budget for the project includes construction costs, EPA will pay the CAR on a progress payment basis according to the following schedule\_\_\_\_\_.
3. **Alternate 3.** (Approved budget does not include construction costs) The CAR will be paid in advance provided it has funds management controls in place which meet the requirements of 40 CFR 30.22 or 40 CFR. §31.21, as applicable.

## **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA-approved work plan.

## **ENVIRONMENTAL RESULTS - RECIPIENT PERFORMANCE REPORTING**

Recipients subject to 40 C.F.R. Part 31 (other than recipients of State or Tribal Program grants under 40 C.F.R. Parts 35 Subparts A or B)

Performance Reports:

In accordance with 40 C.F.R. §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

1.

## **Cleanup Terms and Conditions**

**Please note that these Terms and Conditions (T&Cs) apply to brownfields cleanup grants awarded under CERCLA 104(k).**

*NOTE TO POs: All T&Cs in this document must be used as presented here unless they are marked "OPTIONAL" or "CAN CHANGE."*

## **I. GENERAL FEDERAL REQUIREMENTS**

**Note: These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental recipients.**

### **A. Federal Policy and Guidance**

1. a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR must ensure cleanups are protective of human

health and the environment.

- b. The CAR must consider whether they are required to conduct cleanups under a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure the proposed cleanup is protective of human health and the environment.
  - c. **OPTIONAL - Optional T&C for CAR recipients that choose to participate in State or Tribal response programs that do not have a promulgated program.** If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure protectiveness of human health and the environment.
2. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include:
- a. CERCLA 104(g) requires that grant recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts “funded in whole or in part” with funds provided under this agreement. The CAR must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
  - b. The CAR agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled “Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects,” as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled “Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.”
  - c. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and

implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

## **B. Changes to Sites and Cleanup Methods**

1. a. The CAR must use funds provided by this agreement to clean up the brownfield site in the EPA approved work plan. Any changes to the boundaries of the site must be approved by EPA in a revised work plan.
- b. The CAR may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.

## **II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

### **A. Term of the Agreement**

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement.

### **B. Substantial Involvement**

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement may include reviewing financial and program performance reports; and monitoring all reporting, record-keeping, and other program requirements.
  - c. EPA may waive any of the provisions in term and condition II.B.1., at its own initiative or upon request by the CAR. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
- b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
- c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

### **C. Cooperative Agreement Recipient Roles and Responsibilities**

- 1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment and cleanup activities at a particular site, if they do not have such a professional on staff.
- 2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
- 3. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

### **D. Quarterly Progress Reports**

- 1. The CAR must submit progress reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:
  - a. Documentation of progress at meeting performance outcomes/outputs; project narrative; project time line; and an explanation for any slippage in meeting established outputs/outcomes.
  - b. An update on project milestones.
  - c. A budget recap summary page with the following headings: Current

Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.

- d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.

CAN CHANGE - POs CAN BE FLEXIBLE IN WHAT THEY REQUEST IN QUARTERLY REPORTS (SPECIFICALLY SUB-ELEMENTS 1 - 9) AS ACRES ONLY DRAWS PROPERTY INFORMATION FROM PROPERTY PROFILE FORMS

- e. *Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the work plan. To the extent consistent with the work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance reporting include:*
  - 1. *Acres per property*
  - 2. *Cleanup started/completed*
  - 3. *Types of contaminants cleaned up*
  - 4. *Acres of greenspace created*
  - 5. *Engineering/institutional controls required, type, and whether they are in place*
  - 6. *Redevelopment underway*
  - 7. *Funds leveraged*
  - 8. *Jobs leveraged*
  - 9. *Health monitoring studies, insurance, and/or institutional controls funded*
- 2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA-approved work plan.
- 3. The CAR must complete and submit relevant portions of the Property Profile Form reporting the signing of a loan or subgrant, the initiation of cleanup activities, the completion of cleanup activities and other relevant project milestones, e.g., concerning institutional controls, contaminants, and reuse. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at: <http://www.epa.gov/brownfields/pubs/rptforms.htm>
- 4. In accordance with 40 CFR§31.40(d) or 40 CFR §30.51(f), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work

plan.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

*OPTIONAL/CAN CHANGE - Not applicable if cost-share waived by EPA*

#### **A. Cost Share Requirement - Do not use if waived by EPA**

1. CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

#### **B. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the EPA-approved work plan, cooperative agreement funds may be used for programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section IV of these terms and conditions. In addition, eligible programmatic expenses may include:
  - a. Ensuring cleanup activities at a particular site are authorized by CERCLA 104(k) and the EPA approved work plan;
  - b. Ensuring that a cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - c. Using a portion of the grant to purchase environmental insurance for the remediation of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section C;
  - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable in III.C.2; and carrying out community involvement pertaining to the cleanup activities.

**CAN CHANGE -**

2. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfields program development and implementation (including monitoring of health and institutional controls) as described in Task \_\_\_\_ of the EPA-approved work plan. The CAR must maintain records on funds that will be used to carry out Task \_\_\_\_ of its EPA-approved work plan to ensure that no more than 10% of its funds are used for brownfields program development and implementation (including monitoring of health and institutional controls) .



### C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - a. Pre-cleanup environmental assessment activities such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
  - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
  - c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new facility or addressing public or private drinking water supplies that have deteriorated through ordinary use);
  - d. Job training unrelated to performing a specific cleanup at a site covered by the grant;
  - e. To pay for a penalty or fine;
  - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - g. To pay for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107;
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
  - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR.
  - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration, with the exception

of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.

b. Ineligible grant administration costs include direct costs for:

- (1) Preparation of applications for Brownfields grants;
- (2) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
- (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
- (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
- (5) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
- (6) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
- (7) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
- (8) Close out under 40 CFR 30.71 and 40 CFR 31.50.

#### **D. Grant Recipient Eligibility**

1. The CAR may only clean up sites *it solely owns*. The CAR must retain ownership of the site throughout the period of performance of the grant. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approves a different arrangement.

#### **E. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA §107**

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA 107. If the CAR is not potentially liable based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), the CAR must meet certain continuing obligations in order to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA 104(k)(7)(C). These continuing obligations

include:

- (1) complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
- (2) taking reasonable steps with respect to hazardous substance releases;
- (3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and
- (4) complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR's continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§101(35), 101(40), 107(b), 107(q) and 107(r).

#### **F. Interest-Bearing Accounts and Program Income**

1. Interest earned on advances are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.
2. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 40 CFR 30.24(b)(1) or 40 CFR 31.25(g)(2), as applicable.

### **IV. CLEANUP ENVIRONMENTAL REQUIREMENTS**

#### **A. Authorized Cleanup Activities**

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
2. For cleanup of petroleum sites identified in the EPA-approved work plan, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective

measures. The cleanup method chosen must be based on this analysis.

3. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

#### **B. Quality Assurance (QA) Requirements**

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

#### **C. Community Relations and Public Involvement in Cleanup Activities**

1. All cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

#### **D. Administrative Record**

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanup is complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

#### **E. Implementation of Cleanup Activities**

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. Subject to the EPA notification and approval provision of Section I.B.1.b., the CAR is allowed to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the CAR is unable or unwilling to complete the cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

#### **F. Completion of Cleanup Activities**

1. The CAR shall ensure that the successful completion of a cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanup is complete. This documentation needs to be included as part of the administrative record.

## **V. OTHER CLEANUP GRANT REQUIREMENTS**

### **A. Inclusion of Special Terms and Conditions in Cleanup Documents**

1. The CAR shall meet the cleanup and other program requirements of the cleanup including:
  - a. In accordance with 40 CFR 31.42 or 40 CFR 30.53, the CAR shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with cleanup grant funds. Cooperative agreement recipients shall provide access to records relating to cleanups supported with cleanup grant funds to authorized representatives of the Federal government.
  - b. The CAR has an ongoing obligation to advise EPA if assessed any penalties resulting from environmental non-compliance at the site subject to this agreement.

### **B. Conflict of Interest**

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest or the appearance of the CAR's lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
  - (i) The affected party,
  - (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of

conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

## **VI. PAYMENT AND CLOSEOUT**

For the purposes of these terms and conditions, the following definitions apply: “payment” is the U.S. EPA’s transfer of funds to the CAR; “close out” refers to the process that the U.S. EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

### **A. Payment Schedule**

1. **Alternate 1.** If the approved budget for the project includes a substantial amount of construction costs, EPA will pay the CAR on a reimbursement basis. The CAR must submit documentation of obligations and expenses incurred under the agreement to EPA’s project officer for approval prior to obtaining payment from EPA under the following procedures\_\_\_\_\_.
2. **Alternate 2.** If the approved budget for the project includes construction costs, EPA will pay the CAR on a progress payment basis according to the following schedule\_\_\_\_\_.
3. **Alternate 3.** (Approved budget does not include construction costs) The CAR will be paid in advance provided it has funds management controls in place which meet the requirements of 40 CFR 30. 22 or 40 CFR. §31.21, as applicable.

### **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA-approved work plan.

1.

## **Cleanup Terms and Conditions**

**Please note that these Terms and Conditions (T&Cs) apply to brownfields cleanup grants awarded under CERCLA 104(k).**

*NOTE TO POs: All T&Cs in this document must be used as presented here unless they are marked “OPTIONAL” or “CAN CHANGE.”*

## **I. GENERAL FEDERAL REQUIREMENTS**

**Note: These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental**

recipients.

#### A. Federal Policy and Guidance

1.
  - a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
  - b. The CAR must consider whether they are required to conduct cleanups under a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure the proposed cleanup is protective of human health and the environment.
  - c. **OPTIONAL - Optional T&C for CAR recipients that choose to participate in State or Tribal response programs that do not have a promulgated program.** If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure protectiveness of human health and the environment.
2. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include:
  - a. CERCLA 104(g) requires that grant recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts “funded in whole or in part” with funds provided under this agreement. The CAR must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
  - b. The CAR agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled “Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects,” as amended by Executive Order 13208 (April 11,

2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."

- c. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

#### **B. Changes to Sites and Cleanup Methods**

- 1.
  - a. The CAR must use funds provided by this agreement to clean up the brownfield site in the EPA approved work plan. Any changes to the boundaries of the site must be approved by EPA in a revised work plan.
  - b. The CAR may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.

## **II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

#### **A. Term of the Agreement**

- 1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
- 2. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement.

#### **B. Substantial Involvement**

- 1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services



contracts.

- b. Substantial EPA involvement may include reviewing financial and program performance reports; and monitoring all reporting, record-keeping, and other program requirements.
- c. EPA may waive any of the provisions in term and condition II.B.1., at its own initiative or upon request by the CAR. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
- b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
- c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

**C. Cooperative Agreement Recipient Roles and Responsibilities**

- 1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment and cleanup activities at a particular site, if they do not have such a professional on staff.
- 2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
- 3. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

**D. Quarterly Progress Reports**

- 1. The CAR must submit progress reports on a quarterly basis (30 days after the end of each

Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:

- a. Documentation of progress at meeting performance outcomes/outputs; project narrative; project time line; and an explanation for any slippage in meeting established outputs/outcomes.
- b. An update on project milestones.
- c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
- d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.

CAN CHANGE - POs CAN BE FLEXIBLE IN WHAT THEY REQUEST IN QUARTERLY REPORTS (SPECIFICALLY SUB-ELEMENTS 1 - 9) AS ACRES ONLY DRAWS PROPERTY INFORMATION FROM PROPERTY PROFILE FORMS

- e. *Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the work plan. To the extent consistent with the work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance reporting include:*
  1. *Acres per property*
  2. *Cleanup started/completed*
  3. *Types of contaminants cleaned up*
  4. *Acres of greenspace created*
  5. *Engineering/institutional controls required, type, and whether they are in place*
  6. *Redevelopment underway*
  7. *Funds leveraged*
  8. *Jobs leveraged*
  9. *Health monitoring studies, insurance, and/or institutional controls funded*
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA-approved work plan.
3. The CAR must complete and submit relevant portions of the Property Profile Form reporting the signing of a loan or subgrant, the initiation of cleanup activities, the completion of cleanup activities and other relevant project milestones, e.g., concerning institutional

controls, contaminants, and reuse. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at: <http://www.epa.gov/brownfields/pubs/rptforms.htm>

4. In accordance with 40 CFR§31.40(d) or 40 CFR §30.51(f), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

*OPTIONAL/CAN CHANGE - Not applicable if cost-share waived by EPA*

#### **A. Cost Share Requirement - Do not use if waived by EPA**

1. CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

#### **B. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the EPA-approved work plan, cooperative agreement funds may be used for programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section IV of these terms and conditions. In addition, eligible programmatic expenses may include:
  - a. Ensuring cleanup activities at a particular site are authorized by CERCLA 104(k) and the EPA approved work plan;
  - b. Ensuring that a cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - c. Using a portion of the grant to purchase environmental insurance for the remediation of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section C;
  - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts;

awarding and managing subgrants to the extent allowable in III.C.2; and carrying out community involvement pertaining to the cleanup activities.

**CAN CHANGE -**

- 2. Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfields program development and implementation (including monitoring of health and institutional controls) as described in Task \_\_\_\_ of the EPA-approved work plan. The CAR must maintain records on funds that will be used to carry out Task \_\_\_\_ of its EPA-approved work plan to ensure that no more than 10% of its funds are used for brownfields program development and implementation (including monitoring of health and institutional controls) .

**C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - a. Pre-cleanup environmental assessment activities such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
  - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
  - c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new facility or addressing public or private drinking water supplies that have deteriorated through ordinary use);
  - d. Job training unrelated to performing a specific cleanup at a site covered by the grant;
  - e. To pay for a penalty or fine;
  - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - g. To pay for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107;
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
  - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB

## Circulars.

2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR.
  - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
  - b. Ineligible grant administration costs include direct costs for:
    - (1) Preparation of applications for Brownfields grants;
    - (2) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
    - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
    - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
    - (5) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
    - (6) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
    - (7) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
    - (8) Close out under 40 CFR 30.71 and 40 CFR 31.50.

## D. Grant Recipient Eligibility

1. The CAR may only clean up sites *it solely owns*. The CAR must retain ownership of the site throughout the period of performance of the grant. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approves a different arrangement.

**E. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA §107**

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA 107. If the CAR is not potentially liable based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), the CAR must meet certain continuing obligations in order to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA 104(k)(7)(C). These continuing obligations include:

(1) complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

(2) taking reasonable steps with respect to hazardous substance releases;

(3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and

(4) complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR's continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§101(35), 101(40), 107(b), 107(q) and 107(r).

**F. Interest-Bearing Accounts and Program Income**

1. Interest earned on advances are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.
2. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 40 CFR 30.24(b)(1) or 40 CFR 31.25(g)(2), as applicable.

**IV. CLEANUP ENVIRONMENTAL REQUIREMENTS**

**A. Authorized Cleanup Activities**

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
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  - (i) The affected party,



- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

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### **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA-approved work plan.

### **2. ENVIRONMENTAL RESULTS - RECIPIENT PERFORMANCE REPORTING**

Recipients subject to 40 C.F.R. Part 30

#### **Performance Reports:**

In accordance with 40 C.F.R. § 30.51 (d), the recipient agrees to include in performance reports submitted under this agreement brief information on each of the following areas: 1) a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the assistance agreement work plan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 30.51 (f), the recipient agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.